

March 6, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Protecting the Privacy of Customers of Broadband and Other
Telecommunications Services
WC Docket No. 16-106

Dear Ms. Dortch:

As the Commission evaluates the pending petitions to reconsider the broadband privacy rules promulgated last fall, I write to highlight two key portions of the record that raise serious questions about the utility and legality of these new regulations.

First, last year, the Progressive Policy Institute commissioned a consumer poll by Public Opinion Strategies to assess consumer opinion about how their online information is protected. The results of this poll are attached (Attachment 1).

By an overwhelming margin, 94 percent vs. 5 percent, Internet users agree, “All companies collecting data online should follow the same consumer privacy rules so that consumers can be assured that their personal data is protected regardless of the company that collects or uses it,” including 82 percent of Internet users who “strongly” agree with that statement. Overall, 83% of consumers believe online privacy protections should be based on the sensitivity of their online data, rather than on who is collecting and using it.

Based on this data, the FCC’s decision to enact privacy rules for internet providers that vary so greatly from the FTC framework that applies to other internet companies seems likely to confuse consumers and violate their expectations.

Second, I also urge the Commission to review the attached paper and supporting remarks by the progressive legal scholar Lawrence Tribe of Harvard Law School (Attachments 2 and 3). This paper warns that rules drawing arbitrary distinctions between speakers and unreasonably burdening the companies’ ability to communicate with their customers are constitutionally infirm. As Professor Tribe explains, “the FCC’s proposed rules almost certainly could not survive any meaningful degree of First Amendment scrutiny – and certainly could not survive any version of heightened scrutiny, either strict scrutiny or something only slightly less, that the

Supreme Court has applied for nearly three quarters of a century to opt-in rules of the sort that the FCC proposes to adopt for its broadband privacy regime.”

That legal uncertainty now hangs like a storm cloud over the entire Internet privacy regime.

Many commentators urged the Commission to promulgate technology neutral rules that follow the principles embodied in the Obama Administration’s Consumer Privacy Bill of Rights and the Federal Trade Commission’s well-established and effective privacy framework.

Reconsideration provides a valuable opportunity for the Commission to take this more responsible, pro-consumer path.

Sincerely,

A handwritten signature in blue ink, appearing to read 'L. Mark Lewis', with a stylized, cursive script.

Lindsay Mark Lewis
Executive Director
Progressive Policy Institute